

12 September 2018

Education Interim Committee  
Montana Legislative Services  
P.O. Box 201706  
Helena, MT 59620-1706

Re: Legislative Requests

Dear Education Interim Committee:

The Office of Public Instruction has been requested to provide you with a list detailing some of the agency's potential requests of the Legislature for the coming 2019 Legislative Session. Below, please find the top four requests that I would have of the Legislature.

My *first request* is for the Legislature to examine Montana's laws regarding the state's ability to protect students from people who could do them harm. The Office of Public Instruction is in receipt of a June 27, 2018, letter from the United States Department of Education (enclosed) reminding Montana of its obligations on this subject. In part, this letter states:

Under section 8546, every State, SEA, or LEA that receives ESEA funds must have in place laws, regulations, or policies that prohibit the SEA, an LEA, or school, as well as any school employee, contractor, or agent, from providing a recommendation of employment for an employee, contractor, or agent that the SEA, LEA, or school, or the individual acting on behalf of the SEA, LEA, or school, knows, or has probable cause to believe, has engaged in sexual misconduct with a student or minor in violation of law.

The Office of Public Instruction is collaborating with the Board of Public Education to examine what laws, regulations, or policies are in place to fulfill Montana's duty to its students in this regard. However, I strongly urge the Legislature to also examine this and take up the cause of protecting Montana's students.

That leads me to my *second request*, which also pertains to student safety. After time spent in the field and speaking with those who are tasked with serving our students every day, I believe that it is important that Montana set aside time especially for our educators to learn more about school safety and have time to work and develop plans to keep our students safe. To that end, I would request that one of the Pupil-Instruction-Related Days provided for in Mont. Code Ann. § 20-1-304 be devoted to school safety. I would request that this come out of one of the already-allotted seven days.

Next, for my *third request* I would like to see this Legislature look at the student data protection statute Mont. Code Ann. § 20-7-104. In reviewing this statute with some of my partners in Montana government, it appears that this statute may have had some unexpected side effects that have hampered the OPI's, and other state agencies', abilities to serve our students in the best way possible. This statute should be modified to protect our students and their data while still allowing our agencies to collaborate to better serve them. I am confident that a middle ground can be reached on this.

Finally, it is my *fourth request* that this Legislature look to the way school funding is distributed pursuant to the current statutory payment schedule. I would particularly like to see the Legislature consider smoothing out the outliers in the distribution of BASE aid to our schools, found in Mont. Code Ann. § 20-9-344(5). In these tough economic times, there have been moments where it was feared that the state would not be able to fulfill some of its larger semi-annual obligations under the current schedule. I would like to see some of that uncertainty removed by making all these required payments more equivalent to each other.

Thank you for taking the time to consider these four requests. I look forward to working with all of you in the months ahead to put our Montana students first.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elsie Arntzen".

Elsie Arntzen  
Superintendent of Public Instruction



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

June 27, 2018

Dear Chief State School Officers:

As you know, in December 2015, Congress reauthorized the Elementary and Secondary Education Act of 1965 (ESEA), through the Every Student Succeeds Act (ESSA). The reauthorized law builds on the ESEA's role in helping to ensure that every child has the opportunity to obtain a high-quality education. Achieving this goal is essential, but we can achieve it only if every student is safe in his or her school. To that end, I am writing to remind you of an important provision that Congress included in the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act, to help protect students from sexual abuse. That provision, in section 8546 of the ESEA (20 U.S.C. § 7926), requiring policies to be in place to prohibit the aiding and abetting of sexual abuse, imposes an important requirement on States, State educational agencies (SEAs), and local educational agencies (LEAs) that receive ESEA funds. When your agency applied for funds under ESEA, your agency provided an assurance that all applicable legal requirements, including section 8546, would be complied with; additionally, LEAs provided similar assurances.

For too long, and too often, teachers or other school staff who have engaged in sexual misconduct with a student or minor at one school have been able to obtain employment at another school, without that other school ever learning of the prior misconduct. This sometimes occurs because someone from the employee's prior school provides a recommendation that helps the employee obtain new employment. Section 8546 of the ESEA seeks to end this abhorrent practice.

Under section 8546, every State, SEA, or LEA that receives ESEA funds must have in place laws, regulations, or policies that prohibit the SEA, an LEA, or school, as well as any school employee, contractor, or agent, from providing a recommendation of employment for an employee, contractor, or agent that the SEA, LEA, or school, or the individual acting on behalf of the SEA, LEA, or school, knows, or has probable cause to believe, has engaged in sexual misconduct with a student or minor in violation of the law. The SEA, LEA, school, or individual acting on behalf of one of those entities would not be prohibited from following routine procedures regarding the transmission of administrative or personnel files but would be prohibited from doing more than that to help the employee obtain new employment.

Section 8546 allows for certain exceptions to the prohibition on providing a recommendation of employment. In particular, the prohibition does not apply if: (1) the alleged misconduct has been properly reported to law enforcement and any other authorities required by Federal, State, or local law; and (2) the matter has been officially closed; the employee, contractor, or agent has been exonerated; or the relevant case or

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investigation remains open without an indictment or other charges having been brought within four years of the date on which the information was provided to law enforcement.

Significantly, section 8546 establishes the minimum requirements that must be met by a State, SEA, or LEA that receives ESEA funds. It does not preempt or prevent a State from adopting a statute, regulation, or policy that establishes more rigorous protections to prevent an SEA, LEA, school, or individual acting on behalf of one of those entities from assisting an employee, contractor, or agent who has engaged in sexual misconduct with a minor or student in violation of the law in obtaining new employment.

The complete text of section 8546 is set forth in the enclosure to this letter.

The U.S. Department of Education (Department) is committed to ensuring State and local compliance with the requirements of section 8546. Failure to meet these requirements may result in the Department taking appropriate enforcement action. In addition, should an LEA or school receiving funds under the ESEA fail to meet these requirements, the SEA under a State-administered program has a range of other enforcement actions at its disposal with respect to noncompliance by an LEA, including placing appropriate special conditions on an LEA's Title I, Part A grant or withholding an LEA's Title I, Part A funds (*see, e.g.*, section 440 of the General Education Provisions Act (20 U.S.C. § 1232c)). In the near future, we intend to reach out to State officials to discuss how SEAs and LEAs are meeting their responsibilities under this important provision. Should you need technical assistance on this matter, please let us know.

We look forward to working with you to help ensure that all children are safe in their schools so that they may receive the best education possible and go on to succeed in college and careers. If you have any questions about this letter, please contact Paul Kesner, Acting Director of the Office of Safe and Healthy Students in the Office of Elementary and Secondary Education.

Thank you for your continued commitment to providing a quality education for all children.

Sincerely,

/s/

Jason Botel  
Principal Deputy Assistant Secretary  
Office of Elementary and Secondary Education

cc: Governors

Enclosure

**ESEA Section 8546 (20 U.S.C. § 7926):**  
**Prohibition on Aiding and Abetting Sexual Abuse**

(a) IN GENERAL. — A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this Act shall have laws, regulations, or policies that prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

(b) EXCEPTION. — The requirements of subsection (a) shall not apply if the information giving rise to probable cause —

(1)(A) has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and  
(B) has been properly reported to any other authorities as required by Federal, State, or local law, including title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the regulations implementing such title under part 106 of title 34, Code of Federal Regulations, or any succeeding regulations; and

(2)(A) the matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law;  
(B) the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or  
(C) the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency.

(c) PROHIBITION. — The Secretary shall not have the authority to mandate, direct, or control the specific measures adopted by a State, State educational agency, or local educational agency under this section.

(d) CONSTRUCTION. — Nothing in this section shall be construed to prevent a State from adopting, or to override a State law, regulation, or policy that provides, greater or additional protections to prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee who engaged in sexual misconduct regarding a minor or student in violation of the law in obtaining a new job.

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# Montana Code Annotated 2017

TITLE 20. EDUCATION


CHAPTER 1. GENERAL PROVISIONS

Part 3. School Terms and Holidays -- Released Time

## Pupil-Instruction-Related Day

**20-1-304. Pupil-instruction-related day.** A pupil-instruction-related day is a day of teacher activities devoted to improving the quality of instruction. The activities may include but are not limited to inservice training, attending state meetings of teacher organizations, and conducting parent conferences. A maximum of 7 pupil-instruction-related days may be conducted during a school year, with a minimum of 3 of the days for instructional and professional development meetings or other appropriate inservice training, if the days are planned in accordance with the policy adopted by the board of public education. The days may not be included as a part of the required minimum aggregate hours of pupil instruction.

**History:** En. 75-7405 by Sec. 369, Ch. 5, L. 1971; R.C.M. 1947, 75-7405; amd. Sec. 1, Ch. 638, L. 1989; amd. Sec. 3, Ch. 430, L. 1997; amd. Sec. 5, Ch. 138, L. 2005.

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# Montana Code Annotated 2017

## TITLE 20. EDUCATION

### CHAPTER 7. SCHOOL INSTRUCTION AND SPECIAL PROGRAMS

#### Part 1. Accreditation and Curriculum

## Transparency And Public Availability Of Public School Performance Data -- Reporting -- Availability For Timely Use To Improve Instruction

**20-7-104. Transparency and public availability of public school performance data -- reporting -- availability for timely use to improve instruction.** (1) The office of public instruction's statewide data system must, at a minimum:

(a) include data entry and intuitive reporting options that school districts can use to make timely decisions that improve instruction and impact student performance while creating a collaborative environment for parents, teachers, and students to work together in improving student performance. Options that the office of public instruction shall incorporate and make available for each school district must include data linkages to provide for automated conversion of data from systems already in use by school districts or by the office of public instruction that allow districts to collect, manage, and present local classroom assessment scores, grades, attendance, and other data to assist in instructional intervention alongside the existing school accountability and statewide student achievement results. The office of public instruction shall ensure that the design of the system is enhanced to prioritize collaborative support of each student's needs by classroom educators, administrators, and parents.

(b) display a publicly available educational data profile for each school district that protects each student's education records in compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99.

(2) Subject to subsection (1)(b), each school district's educational profile must include, at a minimum, the following elements:

- (a) school district contact information and links to district websites, when available;
- (b) state criterion-referenced testing results;
- (c) program and course offerings;
- (d) student enrollment and demographics by grade level; and
- (e) graduation rates.

(3) Each school district shall annually report to the office of public instruction and publish and post on the school district's internet website the following district data for the preceding school year:

- (a) the number and type of employee positions, including administrators;
- (b) for the current employee in each position:

(i) the total amount of compensation paid to the employee by the district. The total amount of compensation includes but is not limited to the employee's base wage or salary, overtime pay, and other income from school-sanctioned extracurricular activities, including coaching and similar activities; and

(ii) the certification held by and required of the employee;

(c) the student-teacher ratio by grade;

(d) (i) the amount, by category, spent by the district for operation and maintenance, stated in total cost and cost per square foot; and

(ii) the amount of principal and interest paid on bonds;

(e) the total district expenditures per student;

(f) the total budget for all funds;

(g) the total number of students enrolled and the average daily attendance;

(h) the total amount spent by the district on extracurricular activities and the total number of students that participated in extracurricular activities; and

(i) the number of students that entered the 9th grade in the school district but did not graduate from a high school in that district and for which the school district did not receive a transfer request. For reporting purposes, the students identified under this subsection (3)(i) are considered to have dropped out of school.

(4) Each school district shall also post on the school district's internet website a copy of every working agreement the district has with any organized labor organization and the district's costs, if any, associated with employee union representation, collective bargaining, and union grievance procedures and litigation resulting from union employee grievances.

(5) If a school district does not have an internet website, the school district shall publish the information required under subsections (2) and (3) in printed form and provide a copy of the information upon request at the cost incurred by the school district for printing only.

(6) The superintendent of public instruction shall continually work in consultation with the K-12 data task force provided for in **20-7-105** to analyze the best options for a statewide data system that will best enhance the ability of school districts to use data for the purposes identified in this section. Emphasis must be placed on developing or purchasing and customizing a statewide data system that promotes and preserves community ownership and local control and that incorporates innovative technologies available in the marketplace that may be in use and that are successfully working in other states. The office of public instruction and the K-12 data task force shall collaborate to enhance the statewide data system to support:

(a) the needs of school districts in using data to improve instruction and student performance;

(b) the collection of data from schools through a process that provides for automated conversion of data from systems already in use by school districts or the office of public instruction and that resolves the repetition of data entry and redundancy of data requested that has been characteristic of the data system in the past and that otherwise reduces the diversion of district staff time away from instruction and supervision;

(c) increased use of data from the centralized system by various functions within the office of public instruction; and

(d) transparency in reporting to schools, school districts, communities, and the public.

(7) The superintendent of public instruction shall gather, maintain, and distribute longitudinal, actionable data in the following areas:



- (a) statewide student identifier;
  - (b) student-level enrollment data, including average daily attendance;
  - (c) student-level statewide assessment data;
  - (d) information on untested students;
  - (e) student-level graduation and dropout data;
  - (f) ability to match student-level K-12 and higher education data;
  - (g) a statewide data audit system;
  - (h) a system to track student achievement with a direct teacher-to-student match to help track, report, and create opportunities for improved individual student performance;
  - (i) student-level course completion data, including transcripts, to assess career and college readiness; and
  - (j) student-level ACT results, scholastic achievement test results, and advanced placement exam data.
- (8) The superintendent of public instruction shall emphasize the creation of and distribution of individual diagnostic data for each student in a manner that is timely and protects the privacy rights of students and families as they relate to education so that school districts may use the data to support timely academic intervention as needed and to otherwise improve the academic achievement of the students of each school district.
- (9) In addition to the data privacy protections in subsection (1)(b), the superintendent of public instruction may provide personally identifiable information gathered, maintained, and distributed pursuant to subsection (7) and any other personally identifiable data only to the office of public instruction, the school district where the student is or has been enrolled, the parent, and the student. The superintendent of public instruction may not share, sell, or otherwise release personally identifiable information to any for-profit business, nonprofit organization, public-private partnership, governmental unit, or other entity unless the student's parent has provided written consent specifying the data to be released, the reason for the release, and the recipient to whom the data may be released.
- (10) On or before June 30, 2013, the superintendent of public instruction shall begin presenting longitudinal data on academic achievement and shall develop plans for a measurement of growth for the statewide student assessment required by the board of public education.

**History:** En. Sec. 4, Ch. 418, L. 2011; amd. Sec. 4, Ch. 400, L. 2013.

# Montana Code Annotated 2017

## TITLE 20. EDUCATION

### CHAPTER 9. FINANCE

#### Part 3. Funding of Basic System of Quality Public Schools

## Duties Of Board Of Public Education For Distribution Of Base Aid

**20-9-344. Duties of board of public education for distribution of BASE aid.** (1) The board of public education shall administer and distribute the BASE aid and state advances for county equalization in the manner and with the powers and duties provided by law. The board of public education:

(a) shall adopt policies for regulating the distribution of BASE aid and state advances for county equalization in accordance with the provisions of law;

(b) may require reports from the county superintendents, county treasurers, and trustees that it considers necessary; and

(c) shall order the superintendent of public instruction to distribute the BASE aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of BASE aid, the board of public education may not increase or decrease the BASE aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(2) The board of public education may order the superintendent of public instruction to withhold distribution of BASE aid from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status because of failure to meet the board of public education's assurance and performance standards.

(3) Prior to any proposed order by the board of public education to withhold distribution of BASE aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(4) If a district or county receives more BASE aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(5) Except as provided in **20-9-347(2)**, the BASE aid payment must be distributed according to the following schedule:

(a) from August to October of the school fiscal year, to each district 10% of:

(i) direct state aid;

(ii) the total quality educator payment;

(iii) the total at-risk student payment;

- (iv) the total Indian education for all payment;
- (v) the total American Indian achievement gap payment; and
- (vi) the total data-for-achievement payment;
- (b) from December to April of the school fiscal year, to each district 10% of:
  - (i) direct state aid;
  - (ii) the total quality educator payment;
  - (iii) the total at-risk student payment;
  - (iv) the total Indian education for all payment;
  - (v) the total American Indian achievement gap payment; and
  - (vi) the total data-for-achievement payment;
- (c) in November of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of **20-9-134**;
- (d) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and
- (e) in June of the school fiscal year, the remaining payment to each district of direct state aid, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, and the total data-for-achievement payment.
- (6) The distribution provided for in subsection (5) must occur by the last working day of each month.

**History:** En. 75-6917 by Sec. 267, Ch. 5, L. 1971; amd. Sec. 1, Ch. 166, L. 1973; amd. Sec. 2, Ch. 345, L. 1973; amd. Sec. 1, Ch. 346, L. 1973; amd. Sec. 1, Ch. 55, L. 1974; amd. Sec. 41, Ch. 213, L. 1975; R.C.M. 1947, 75-6917; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 6, Ch. 317, L. 1981; amd. Secs. 1, 3, Ch. 236, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 18, Sp. L. June 1986; amd. Sec. 4, Ch. 1, Sp. L. June 1989; amd. Sec. 38, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 622, L. 1991; amd. Sec. 28, Ch. 767, L. 1991; amd. Sec. 1, Ch. 1, Sp. L. July 1992; amd. Sec. 8, Ch. 6, Sp. L. July 1992; amd. Sec. 25, Ch. 633, L. 1993; amd. Sec. 1, Ch. 308, L. 1999; amd. Sec. 62, Ch. 114, L. 2003; amd. Sec. 10, Ch. 4, Sp. L. December 2005; amd. Sec. 15, Ch. 400, L. 2013; amd. Sec. 8, Ch. 336, L. 2017.